

AMENDED AND RESTATED EMPLOYMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL
AND
STEPHEN RYMER

This Amended and Restated Employment Agreement between the City of Morgan Hill ("CITY") and Stephen Rymer ("RYMER") is hereby executed by and between the parties this 2nd day of March, 2016, with an effective date of February 4, 2016 (the "Effective Date").

RECITALS

- A. RYMER has been employed by CITY since April 17, 2006;
- B. RYMER has been appointed by CITY to serve as City Manager of Morgan Hill effective on February 4, 2013;
- C. RYMER will also serve as the Executive Director of the Successor Agency to the Morgan Hill Redevelopment Agency effective February 4, 2013; and
- D. At a duly noticed public meeting, the City Council approved that certain original Employment Agreement with RYMER on January 16, 2013; and
- E. At a duly noticed public meeting, the City Council approved this Amended and Restated Employment Agreement on May 21, 2014; and
- F. At a duly noticed public meeting on July 2, 2014, the City Council revised Section 10 of this Amended and Restated Employment Agreement regarding the housing loan.
- G. At a duly noticed public meeting, the City Council approved this Amended and Restated Employment Agreement on March 18, 2015.
- H. At a duly noticed public meeting, the City Council approved this Amended and Restated Employment Agreement on March 2, 2016.

AGREEMENT

In consideration of the mutual promises set forth herein and for good and valuable consideration hereby acknowledged, the parties agree as follows:

- 1. Parties: The parties to this agreement ("Agreement") are CITY and RYMER (hereinafter collectively ("the Parties")).
- 2. Purpose: The purpose of this Agreement is to provide the terms for the employment of RYMER as City Manager of CITY, as currently provided by Title 2, Chapter 2.08 of the Municipal Code of CITY.
- 3. Duties: CITY hereby agrees to employ RYMER to perform the functions and duties of City Manager for the CITY and as Executive Director of the Successor Agency to the Redevelopment Agency of CITY as specified in the Municipal Code of CITY, the Job Description (a copy of which is attached hereto and which is included herein by this reference), applicable state statutes pertaining to Successor Agencies, any and all other applicable CITY ordinances, resolutions or policies, and to perform such other legally permissible and proper duties and functions as the CITY shall from time to time assign.

RYMER agrees that, to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or impliedly by the terms of this Agreement.

4. Agreement Provisions:

- 4.1 **Term:** This Agreement shall commence on the Effective Date and terminate on June 30, 2018 (the "Termination Date") unless either: (1) the term is modified hereafter by written agreement of the Parties, or (2) the Agreement renews automatically in accordance with the provisions of Section 4.3 herein. RYMER agrees to remain in the exclusive employ of the CITY during the term of the Agreement and neither to accept other employment nor become employed by another employer until the Termination Date, unless the term is modified as provided herein.
- 4.2 **Exclusivity:** The term "exclusive employ of the CITY" as used in section 4.1 above shall not be construed to preclude occasional teaching, writing, or military service performed by RYMER as long as it does not conflict with his primary responsibilities as City Manager and Executive Director as described in this Agreement. Also, CITY and RYMER recognize the value of participation in the City Manager's Department and other League of California Cities activities, and that speaking requests and teaching are valuable resources to the CITY. CITY may permit conflicting services to other entities upon prior approval of the City Council.
- 4.3 **Automatic Renewal:** At the conclusion of the term of this Agreement, it shall automatically renew each year, effective every July 1, unless terminated by the delivery of an Election of Non-Renewal by either party by no later than December 30 of the current term. Notice of an Election of Non-Renewal shall be conveyed by written notice to the other party.

5. Separation from Employment:

- 5.1 **Employment At-Will:** The City Council may, subject to provisions set out below, terminate the services of RYMER at any time, it being expressly understood and agreed between the parties that RYMER serves as an at-will employee of the City Council. CITY must provide RYMER with thirty (30) days written notice prior to separation from employment. For any period following an election of the Mayor or a member of the City Council, CITY may not give notice of separation from employment to RYMER until sixty (60) days after such election. The intent of the time period is to allow the new City Council to have adequate time to review the City Manager's performance.
- 5.2 **Severance Payment:**
 - 5.2.1 In the event of RYMER's separation from employment in accordance with Section 5.1 while RYMER is still willing and able to perform the duties of CITY Manager, where such termination is without cause, RYMER shall be entitled to receive compensation, consisting of a lump-sum payment of six (6) months of base salary and benefits ("Severance Payment");

- 5.2.2 The Severance Payment shall include all benefits payable to or on behalf of RYMER with the exception of vacation not yet accrued as of the date of separation. Both salary and benefits shall be computed at the rates in effect as of the date of separation from employment;
- 5.2.3 RYMER's acceptance of the Severance Payment shall release CITY from any further obligation under this Agreement, and also from any actual or alleged liability to RYMER that may be asserted in any claim of any nature by RYMER against CITY based upon or arising from his employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, RYMER agrees to execute and deliver to CITY a release releasing CITY of all claims that RYMER may have against CITY. In return for such Severance Payment, RYMER further agrees to be available for consultation and assistance to the incoming acting, interim or permanent City Manager for a period of at least sixty (60) days.
- 5.2.4 RYMER shall **not** be entitled to the Severance Payment in the following events:
 - 5.2.4.1 The Agreement expires and CITY elects not to renew this Agreement pursuant to Section 4.3, above;
 - 5.2.4.2 RYMER is terminated because of his conviction of a felony or misdemeanor involving moral turpitude, or is convicted of any illegal act involving personal gain to himself; or
 - 5.2.4.3 RYMER becomes incapable of discharging his responsibilities as described in this Agreement due to a permanent disability pursuant to Section 7 herein.
- 5.3 **Termination By RYMER:** RYMER may resign at any time from his position with CITY provided that he gives CITY sixty (60) days advance written notice. Should RYMER not provide CITY with sixty (60) days written notice, he shall not be entitled to cashout of any benefit other than as required by law.
- 6. **Abuse of Office:** If RYMER is convicted of a crime involving an abuse of his office or position, he shall fully reimburse the CITY for the following items of costs to the CITY:
 - 6.1 Leave salary paid to RYMER by CITY pending an investigation of the crime of which he is convicted;
 - 6.2 Any funds paid by CITY for the legal criminal defense of RYMER;
 - 6.3 Any cash settlement paid to RYMER by CITY related to the termination of this Agreement;
 - 6.4 Any payments by CITY to RYMER that were not agreed upon in this Agreement; and
 - 6.5 For the purpose of this section the term "abuse of his office or position" means either:
 - a. an abuse of public authority including but not limited to waste, fraud, and violation of law under color of authority, or
 - b. a crime against public justice including but not limited to a crime described in Title 7 of Part 1 of the California Penal Code.

7. Disability: If, during the course of this Agreement, RYMER becomes permanently disabled or is otherwise unable to perform the full range of the essential functions of his position because of sickness, accident, injury, mental incapacity, or other health reason for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave, CITY shall have the option to terminate this Agreement pursuant to Section 5.1.

8. Compensation:

- 8.1 Effective the pay period beginning January 31, 2016, CITY agrees to pay RYMER, for his services rendered pursuant hereto, an annual salary of Two Hundred Twenty-Eight Thousand dollars (\$228,000) ("Base Salary") payable at the same time and in the same manner as other employees of the CITY are paid. Beginning July 1, 2016, and annually thereafter and except as otherwise provided in this Agreement, Rymer shall receive an annual cost of living adjustment ("COLA") in his base salary equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers, as calculated by the California Department of Industrial Relations for the 12 month period ending on the immediately preceding June 30. The City Council, in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to RYMER during the term of this Agreement;
- 8.2 CITY agrees to provide RYMER a Five Hundred dollar (\$500) per month vehicle allowance;
- 8.3 RYMER shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the CITY's Management Salary Resolution, as it is amended from time to time by City Council action; and
- 8.4 RYMER shall make periodic payments to CalPERS in an amount commensurate with CITY employees in the range of the "A" group of the CITY's Management Salary Resolution.
- 8.5 Beginning with CalPERS rates effective on July 1, 2014, RYMER agrees to pay fifty percent (50%) of future rate increases charged by CalPERS to CITY as an employer.

9. Performance Evaluation:

- 9.1 Annually, the City Council, in consultation with RYMER, shall define goals and performance objectives for the City Manager which they determine to be necessary for the proper operation of CITY; and
- 9.2 The City Council shall review and evaluate the performance of RYMER at least annually and shall meet with RYMER to discuss the evaluation between February and March of each year. Said review shall be in accordance with a process developed jointly by CITY and RYMER, which may be modified by mutual agreement. This evaluation shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law, or through some other mutually acceptable format. The parties agree that the primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and provide an opportunity for RYMER to take affirmative action to address weaknesses and areas needing improvement. RYMER shall be

provided with a summary written statement of the findings of City Council, and he shall be provided with an opportunity to discuss his performance evaluation with City Council.

10. Housing Loan:

10.1 CITY agrees to loan RYMER a maximum of Nine Hundred Thousand Dollars (\$900,000) to purchase a residence and property ("Property") in Morgan Hill. Said loan proceeds shall be used to purchase Property within City limits which will be RYMER'S primary residence. Said loan shall be evidenced by a Promissory Note made by RYMER payable to the CITY and secured by a First Deed of Trust on the Property. The principal amount of the loan shall bear interest at the 10 Year Treasury Rate plus one quarter percent (.25%) rounded to the nearest one-eighth percent (1/8%), amortized over a thirty (30) year period, and recalculated according to the same formula on the 10th and 20th anniversary dates of the loan. RYMER shall pay principal and interest for fifty percent (50%) of the loan amount and interest only for the remaining fifty percent (50%) of the loan amount. Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in 30 years. Payments on the loan shall be deferred until RYMER closes escrow on his current home or December 31, 2014, whichever is earlier. The rate may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. RYMER agrees to a recourse loan. Rymer shall be responsible to pay all applicable taxes, insurance, and homeowner fees and shall be responsible at his expense to maintain the property in good and habitable conditions at all times.

10.2 CITY agrees to loan RYMER One Hundred Ten Thousand Dollars (\$110,000) home improvement loan for his residence and property ("Property") in Morgan Hill. Said loan shall be evidenced by a Promissory Note made by RYMER payable to the CITY and secured by a Second Deed of Trust on the Property. The principal amount of the loan shall bear interest at five percent (5%). Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in five (5) years. Payments on the loan shall commence on April 17, 2015. The loan may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. RYMER agrees to a recourse loan.

11. Hours of Work, Administrative Leave:

11.1 It is recognized that RYMER must devote a great deal of time outside of normal working hours to the business of CITY. To that end, RYMER is granted total annual administrative leave of one hundred twenty (120) hours per fiscal year, with a maximum aggregate accrual of five hundred forty (540) hours, above which maximum amount RYMER shall not earn or accrue additional administrative leave.

11.2 Administrative leave may be taken by RYMER at his discretion.

- 11.3 Effective January 1, 2015 and in combination with RYMER's annual vacation leave, RYMER may elect to cash out up to one hundred sixty (160) hours of the hours of administrative leave and vacation leave that will accrue to RYMER in the following calendar year only so long as RYMER irrevocably elects such cash out option prior to December 1 of each year for the following calendar year.
- 11.4 Upon RYMER's separation of employment from the CITY, RYMER shall be paid for all accrued, unused hours of administrative leave and vacation leave.
12. Deferred Compensation: Effective the pay period beginning February 2, 2014, RYMER shall be entitled to receive deferred compensation equal to the maximum annual contribution permitted under Section 457 of the Internal Revenue Code, such amounts to be credited to his account as deferred compensation.
13. Professional Development: The CITY agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of RYMER for professional development and official travel, meetings and occasions adequate to continue his professional development and to adequately pursue necessary official and other functions of CITY, including but not limited to the annual Conference of the League of California Cities ("LCC"), the LCC Spring City Manager's Department meeting, and annual ICMA Conference. Travel and conference expenses shall be reimbursed for reasonable expenses only and in accordance with the CITY's policies governing travel and conference expense reimbursement. The CITY further agrees to reimburse RYMER for tuition, fees, books, software and related educational expenses for professional development.
14. Non-Liability of Officials and Employees: No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
15. Bonding: CITY shall bear the full cost of any fidelity or other bonds required of RYMER under any law or ordinance.
16. Other Terms and Conditions of Employment:
- 16.1 The City Council, in conjunction with RYMER, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of RYMER, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement or applicable laws; and
- 16.2 All provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they may now exist or hereafter may be amended, shall also apply to RYMER as they now do to other CITY employees in addition to said benefits enumerated specifically for the benefit of RYMER, except as herein provided.
17. No Reduction in Benefits: CITY shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to RYMER.
18. Notice: Notices pursuant to this Agreement shall be given by deposit in the custody of the U.S. Postal Service. Alternatively, notices required pursuant to this Agreement may

be personally served in the same manner as is applicable to civil judicial proceedings. Notices shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the U.S. Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.

18.1 Notice to RYMER shall be sent to: 3455 Oakwood Court, Morgan Hill, CA 95037; and

18.2 Notice to CITY shall be sent to: Mayor, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.

19. General Provisions:

19.1 The text herein shall constitute the entire Agreement;

19.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of RYMER;

19.3 This Agreement is effective as of the Effective Date

19.4 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or enforceable, the remainder shall be deemed severable, shall not be deemed ineffective, and shall remain in full force and effect;

19.5 The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement;

19.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous Agreements oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and RYMER;

19.7 This Agreement shall be interpreted under the laws of the State of California; and

19.8 This Agreement shall be interpreted as though prepared by both parties.

IN WITNESS WHEREOF the Parties hereby agree to the foregoing by executing below:

CITY OF MORGAN HILL

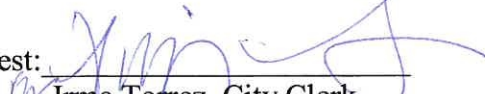
Date:

4/1/2016

By: 

Steve Tate, Mayor

Attest:


Irma Torrez, City Clerk

Date:

4/1/16

STEPHEN RYMER

Date:

2/26/16

By:



Stephen Rymer

APPROVED AS TO FORM

By: Lexi Jensen
Per Gary Baum, Interim City Attorney

Date: 04/04/16

Council Approval: 03/02/16
Resolution No: